

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ORDER

This matter comes before the Court for review of the Order issued by United States Magistrate Judge Shon T. Erwin on July 12, 2019 [Doc. No. 43]. Plaintiff, who appears *pro se*, seeks reconsideration pursuant to 28 U.S.C. § 636(b)(1)(A) of Judge Erwin’s ruling on her “Motion to Proceed as Administrative Remedies Already Exhausted” [Doc. No. 35].¹ *See Appeal to Dist. Judge on Order Issued by Magistrate Judge* [Doc. No. 48]. By the subject Motion, Plaintiff sought a determination that she may proceed on her § 1983 claim against Defendants because she has exhausted all available administrative remedies. Judge Erwin ruled that exhaustion is an affirmative defense and Plaintiff’s attempt to obtain an anticipatory ruling on exhaustion is premature.

Upon consideration, the Court finds that Plaintiff objects to a magistrate judge's ruling on a nondispositive pretrial matter decided pursuant to 28 U.S.C. § 636(b)(1)(A).

¹ Although Plaintiff does not cite this legal authority, the Court must liberally construe her *pro se* filings. See *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

Thus, the Court's review is limited to determining whether Plaintiff has shown Judge Erwin's Order "is clearly erroneous or contrary to law." *See id.*; *see also* Fed. R. Civ. P. 72(a). The Court finds that this standard has not been met with respect to the Order under review.

Judge Erwin reasonably construed Plaintiff's *pro se* Motion as one targeting an affirmative defense to her § 1983 claim. *See* 42 U.S.C. § 1997e(a). The defense has not been raised by any defendant; Plaintiff just recently completed service of process. Judge Erwin determined that Plaintiff's Motion improperly requested an anticipatory ruling on a possible defense, and invited Plaintiff to argue her position "[i]f and when Defendants are served and raise the issue of exhaustion." *See* Order at 4. The Court finds no error in this ruling.

IT IS THEREFORE ORDERED that Plaintiff's Appeal [Doc. No. 48], construed as a timely objection to a nondispositive ruling, is OVERRULED. Judge Erwin's Order [Doc No. 43] is AFFIRMED.

IT IS SO ORDERED this 5th day of August, 2019.



TIMOTHY D. DeGIUSTI
Chief United States District Judge